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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 76

PHILIP CARDINALE, JR.,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

BRIEF FOR PETITIONER

~~PETITION FOR WRIT OF CERTIORARI~~
TO THE SUPREME COURT OF LOUISIANA

NATHAN GREENBERG
848 Second Street
Gretna, Louisiana
Attorney for Petitioner

HAUSER DIV., McMULLEN PTG. CO., "Legal Printers", 441 Gravier St., N. O., La.

INDEX

Page

Lower Court Opinions 2

Jurisdiction 2

Statutes and Constitutional Provisions Involved 2

Questions Presented for Review 4

Statement of the Case 5

Argument 9

Conclusion 24

CITATIONS

Cases:

Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229 (1965) 22

Marshall v. United States, 360 U.S. 310, 79 S.Ct. 1171, 3 L. Ed. 1250 (1959) 23

Michelson v. United States, 335 U.S. 469, 69 S.Ct. 213, 93 L.Ed. 168 (1948) 15

People v. Loomis, 178 N.Y. 400, 70 N.F. 919 (1904) 10

Spencer v. State of Texas, 385 U.S. 554, 87 S.Ct. 648 (1967) 8, 20

State v. Fowler, 230 N.C. 470, 53 S.E. 2d 853 (1949) .. 10

State v. Myrick, 181 Kan. 1056, 317 P. 2d 485 (1957).. 10

State v. Nagy, 27 N.J. Super 1, 98 A.2d 613 (1953) 10

State v. Rives, 193 La. 186, 190 So. 374 (1939) 11

CITATIONS (Continued)

Page

State v. Skaug, 161 P. 2d 708 (Nev. 1945) 10

United States v. Jacangelo, 281 F.2d 574 (3rd Cir., 1960) 18

Statutes and other Authorities:

Article XIV, U. S. Constitution 4

Comment, 78 Harvard L.Rev. 426 (1964) 21

Comment, 70 Yale L.J. 763 (1961) 21

29 Am. Jur., 2d., Evidence, §535, p. 587 13

LSA-R.S. 15:445 ..... 3, 20

LSA-R.S. 15:446 ..... 3, 20

LSA-R.S. 15:450 ..... 2, 15, 20

LSA-R.S. 15:495 ..... 3, 11, 20

1 Wigmore on Evidence, §57, p. 456 ..... 12, 21

3 Wigmore, Evidence, §896-918 (3rd ed. 1940) 21

10 Rutgers Law Review, 531, 532 (1956) 21

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

The instant application for a writ of certiorari or review was filed herein by Philip J. Cardinale, Jr., petitioner, following his conviction of murder in the Twenty-Fifth Judicial District Court, Parish of Plaquemines, State of Louisiana, wherein he was sentenced to death. The application for a writ of certiorari or review stemmed from the decree of the Supreme Court of Louisiana handed down on January 15, 1968, which affirmed petitioner's conviction. An application for re-hearing was filed timely, and on February 19, 1968, the application for re-hearing was denied. The instant application for a writ of certiorari or review was filed on May 6, 1968, and the writ of certiorari was granted on November 25, 1968.

LOWER COURT OPINIONS

The opinion of the Supreme Court of Louisiana in the instant case is found at 251 La. 827, 206 So.2d 510. The decree of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines is unreported.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under Title 28, U. S. Code, Section 1257, seeking to review the judgment of the Supreme Court of Louisiana handed down on January 15, 1968. An application for re-hearing was timely filed, and on February 19, 1968, the said application for re-hearing was denied. The denial of the application for re-hearing was entered on February 19, 1968. The instant application for a writ of certiorari was filed on May 6, 1968. The writ of certiorari was granted on November 25, 1968.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Louisiana statutes involved are as follows:

(1) LSA-R.S. 15:450, which provides:

"Every confession, admission or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford."

(2) LSA-R.S. 15:495, which provides:

"Evidence of conviction of crime, but not of arrest, indictment or prosecution, is admissible for the purpose of impeaching the credibility of the witness, but before evidence of such former conviction can be adduced from any other source than the witness whose credibility is to be impeached, he must have been questioned on cross-examination as to such conviction, and have failed distinctly to admit the same; and no witness, whether he be defendant or not, can be asked on cross-examination whether or not he has ever been indicted or arrested, and can only be questioned as to conviction, and as provided herein."

(3) LSA-R.S. 15:445, which provides:

"In order to show intent, evidence is admissible of similar acts, independent of the act charged as a crime in the indictment, for though intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction."

(4) LSA-R.S. 15:446, which provided:

"When knowledge of intent forms an essential part of the inquiry, testimony may be offered of such acts, conduct or declarations of the accused as tend to establish such knowledge or intent and where the offense is one of a system, evidence is admissible to prove the continuity of the offense, and the commission of

similar offenses for the purpose of showing guilty knowledge and intent, but not to prove the offense charged."

The Constitutional provisions involved are as follows:

Amendment XIV, U. S. Constitution, which provides:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are as follows:

(a) Whether the use of a prior conviction to show nothing more than a disposition to commit crime would violate the due process clause of the Fourteenth Amendment.

(b) Whether the procedure used herein in bringing out all of the facts and circumstances of the alleged confession and/or declaration against interest containing reference to the alleged prior offense was unconstitutional

and violated the due process clause of the Fourteenth Amendment.

(c) Whether the four state statutes involved quoted hereinabove at length, i.e., LSA-R.S. 15:445, 446, 450, and 495, are unconstitutional, or whether the procedure used thereunder by the District Attorney for the Parish of Plaquemines to get the evidence in question before the jury was unconstitutional.

STATEMENT OF THE CASE

The issues in the instant case concern the constitutionality of the procedure used herein in the trial court to convict the petitioner of murder. In the instant action, homicide was allegedly committed on August 10, 1965, and thereafter the petitioner turned himself in to the police authorities in Tucson, Arizona. During the course of his custodial interrogation in Tucson, Arizona, he referred to a prior conviction occurring in Louisiana, which prior conviction was for a crime against nature occurring on July 12, 1963, and causing the petitioner to be sentenced to serve three months in the Parish Prison on March 25, 1964 (T. 126, 467). Petitioner further stated during the course of his custodial interrogation that after he served his time in the Orleans Parish Prison, he went looking for his alleged prosecutrix with a gun for the stated purpose of killing her; however, he never did find her, and, therefore no further offense was committed (T. 496-510).

In the opening statement of the District Attorney for the Parish of Plaquemines, Louisiana, he referred to the alleged oral confession and particularly the alleged reference to the alleged prior offense. During the course of the interrogation by an officer from Tucson, Arizona, defendant was interrogated at length about the prior offense and the episode involving going looking for the woman with a gun. In the closing argument, the District Attorney again emphasized the prior offense and the subsequent episode relating to looking for the woman. Timely objection to this testimony and the reference thereto in the opening and closing statement was made by the defense, and bills of exception were reserved, without avail. In commenting upon the issue raised herein, the Louisiana Supreme Court stated:

> "Bill of exceptions No. 10 was reserved to the court's overruling an objection when the Tucson police officers, in the course of relating the inculpatory statement of defendant to them, referred to his admissions (made at the same time) that he had previously (several months before) been convicted of another offense and that he had searched for the prosecuting witness in that case with the intent to kill her if she were found. Bill No. 3 had already been reserved when the district attorney made reference to such admissions in his opening statement, which he was required to do if he intended to later introduce the entire confession into evidence.

"We find no error in the rulings. The record shows that the admissions objected to were made in connection with and as a part of the defendant's statement outlining to the officers his participation in the instant crime.

"The same contention was made in *State v. Maney*, 242 La. 223, 135 So. 2d 473. Therein we referred to LRS 15:450 (1928) Code of Criminal Procedure) which provided: 'Every confession, admission or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford.' And we held: 'The confession is not rendered inadmissible because it admits offenses other than the one for which the accused is on trial and defendant here cannot successfully invoke his contention that the evidence of the injection of heroin by him and his associate, proving another offense, if such were its effect, renders the whole statement inadmissible. The relevancy therefore, of that portion of the admission which does not bear upon the crime charged is of no consequence if the admission concerning the heroin injection was properly permitted in evidence on the basis that it was part of the same statement containing other inculpatory facts which were relevant to the crime charged and closely associated therewith in point of time. It is not denied that the

statement did contain other inculpatory facts which were relevant to this prosecution.'

"The *Maney* holding was approved in *State v. Evans*, 249 La. 861, 192 So. 2d 103. See also *State v. Bailey*, 233 La. 40, 96 So. 2d 34."

The issue presented by the instant application for a writ of certiorari or review has been crystallized in the recent dissenting opinion of Mr. Chief Justice Warren and concurred in by Mr. Justice Fortas in the decision of *Spencer v. State of Texas*, 385 U.S. 554, 87 S. Ct. 648 (1967), the recidivist decision, wherein the issue presented by the instant case is highlighted as follows:

"* * * While this Court has never held that the use of prior convictions to show nothing more than a disposition to commit crime would violate the Due Process Clause of the Fourteenth Amendment, our decisions exercising supervisory power over criminal trials in federal courts, as well as decisions by courts of appeals and of state courts, suggest that evidence of prior crimes introduced for no purpose other than to show criminal disposition would violate the Due Process Clause. Evidence of prior convictions has been forbidden because it jeopardizes the presumption of innocence of the crime currently charged. A jury might punish an accused for being guilty of a previous offense, or feel that incarceration is justified because the accused is a 'bad man,' without regard to this guilt of the crime currently charged. Of course

> it flouts human nature to suppose that a jury would not consider a defendant's previous trouble with the law in deciding whether he has committed the crime currently charged against him. As Mr. Justice Jackson put it in a famous phrase, '[t]he naive assumption that prejudicial effects can be overcome by instructions to the jury * * * all practicing lawyers know to be unmitigated fiction.' "

ARGUMENT

Under the theory advanced by the Louisiana Supreme Court in the instant case, any time an accused makes a statement while he is being interrogated, that statement is admissible in evidence against him, regardless of the relevancy thereof. The tenor of the *Cardinale* case is quoted from the language of the Supreme Court decision hereinabove, and this confirms the statements by the Supreme Court of Louisiana made by that court to counsel for defendant during the course of oral argument. However, the tenor of the *Cardinale* decision and the blanket statement to the effect that anything stated by defendant while he is in the course of a confession and/or declaration against interest is admissible, is clearly contra to the spirit and basis of fairness to the defendant in obtaining a fair trial. The rule stated in a leading secondary authority is as follows:

> "A confession is not rendered ipso facto inadmissible by the declarant's unrelated and separate offense. In proving an admissible con-

fession, the prosecution may introduce parts of the statement which show or indicate that the accused has committed other and separate offenses, where such admissions are inseparably connected with the confession of the crime charged. However, where the relevant parts dealing with the crime charged can be readily separated from those parts confessing to other crimes, most courts have required this to be done, although where such separation is impracticable the courts have almost uniformly held that a cautionary instruction to the jury will suffice. The determination of what is reasonably separable in this respect is usually left to the sound discretion of the trial court." Evidence, 29 Am. Jur. 2d. § 536, p. 587.

Among the decisions throughout the country following the preferable rule are *People v. Loomis,* 178 N.Y. 400, 70 N.F. 919 (1904); *State v. Skaug,* 161 P.2d 708 (Nev. 1945); *State v. Fowler,* 230 N.C. 470, 53 S.E.2d 853 (1949); *State v. Nagy,* 27 N.J. Super 1, 98 A.2d 613 (1953), and *State v. Myrick,* 181 Kan. 1056, 317 P.2d 485 (1957), all of which hold that where part of the confession relates to other offenses and that portion relating to the other offenses is separable, the reference to the other offense must be excluded. Your Honors will note that the so-called confession, and/or declaration against interest in the *Cardinale* case contained reference to another offense as well as to the alleged incident concerning the looking for the woman in the French Quarter with a gun, both of which were clearly separable from the alleged confession relating to the

crime charged in the instant case. However, Your Honors will note that there was no attempt to separate one from the other, nor was there any attempt by the Trial Court to instruct the jury in connection with either the prior offense or the incompleted offense relating to the looking for the girl in the French Quarter with a gun. We respectfully submit that this was error on the part of the Trial Court which was perpetuated by the Supreme Court of Louisiana on different grounds.

Your Honors will note that the basis of the complaint relative to these declarations by the defendant is two-fold: (1) That the alleged oral confession contained reference to a prior offense where the defendant had not taken the stand, had not offered any evidence relative to his good character, nor had there been any basis for impeachment of the defendant's character, see LSA-R.S. 15:495; and (2) that the alleged incident concerning the looking for the woman in the French Quarter with a gun was an incomplete offense, and not a completed one; and that any reference thereto could only have been for the purpose of bias or prejudice. *Cf. State v. Rives*, 193 La. 186, 190 So. 374 (1939). We respectfully submit that the blanket admission of the entirety of the alleged oral confession without any attempt to separate these portions from the portion relating to the instant crime in question was prejudicial error and denied to defendant a fair trial.

Your Honors are well aware of the rule prohibiting the State from going into any other crime besides the crime with which the accused is charged. The basis of

the rule is succinctly stated in Wigmore On Evidence, as follows:

> "The policy of the Anglo-American law is more or less due to the inborn sporting instinct of Anglo-Normandom — the instinct of giving the game fair play even at the expense of efficiency of procedure. This instinct asserts itself in other departments of our trial-law to much less advantage. But, as a pure question of policy, the doctrine is and can be supported as one better calculated than the opposite to lead to just verdicts. The deep tendency of human nature to punish, not because our victim is guilty this time, but because he is a bad man and may well be condemned now that he is caught, is a tendency which cannot fail to operate with any jury, in or out of court. There are also indirect and more subtle disadvantages.
>
> "The rule, then, firmly and universally established in policy and tradition, is that the prosecution may not initially attack the defendant's character."

See 1 Wigmore on Evidence, § 57, p. 456.

We respectfully submit that all of the facts and circumstances relating to the alleged confession and/or declaration against interest indicate that all reference to the prior offense therein should have been excluded, and in the event of failure to exclude reference thereto,

the trial court should have instructed the jury in connection therewith. However, neither were done, and the failure to do both, we respectfully submit, constitutes prejudicial and reversible error.

A leading secondary authority states:

> Parts of a confession which have no reference to the issue upon the trial are not admissible under the rule that the accused is entitled to present the entire statement or conversation connected with a confession." 29 Am. Jur. 2d., Evidence, § 535, p. 587.

Your Honors will note that the Louisiana Supreme Court attempts to justify the admissibility of the reference to both the prior conviction and the episode involving the young woman in the French Quarter on the theory that both were contained in the alleged confession and/or declaration against interest. However, analysis of the alleged confession and/or declaration against interest will readily disclose that neither incident has any relation to the crime charged. Both occurred more than a year prior to the homicide herein. Therefore, both of the above matters should have been excluded under the ruling that parts of a confession which have no reference to the issue upon the trial are not admissible. To follow the theory of the State through to a logical conclusion, the mere fact that something was said by the accused in the alleged confession and/or declaration against interest would make that testimony admissible at the trial. As has been shown, this is clearly not correct. To admit this testimony is to do

violence to the basic principles of fairness which permeate due process of law.

The entire concept of the blanket admission of anything stated by the defendant in the course of a confession, regardless of relevancy, materiality, etc., clearly does violence to the concept of fair trial and due process. Your Honors will note that the Louisiana Supreme Court apparently rejects the rule cited and discussed at length hereinabove that in the event the defendant makes a statement with reference to another and separate offense during the course of a confession, such admissions are admissible only if they are "inseparably connected with the confession of the crime charged." In other words, where the confession of the crime charged also contains reference to an earlier offense, the reference to the earlier offense should be disregarded unless they are so inextricably interwoven with the details of the subsequent offense that they cannot be separated. Yet this is exactly what the Louisiana Supreme Court has refused to do in the instant case, with the result being that the defendant was clearly denied a fair trial.

Your Honors can examine the testimony of the officer from the Tucson police and it will be readily apparent at once that there was no need whatever to go into the prior offense. What purpose did it serve? It served no purpose whatever except to seek to convince the jury that the defendant is a bad man. The language referring to an incomplete offense could not have served any useful purpose whatever, except to prejudice

the minds of the jurors herein — which it must have done.

During the course of oral argument in the Supreme Court of Louisiana, the Chief Justice made the statement to counsel for the defendant that in the event the District Attorney had sought to delete any reference to the prior offense, counsel for the defendant would have reserved a bill of exceptions under the provisions of LSA-R.S. 15:450, on the theory that the confession was not complete. Your Honors will note that the critical aspect of this criminal case or any other criminal case is not whether the District Attorney will commit reversible error— the critical thing in this case or any other criminal case is whether the defendant has a fair trial. This is where we respectfully submit that the Court erred.

Your Honors will also note that the District Attorney changed his approach from the time he first sought to enter the alleged oral statement into evidence in the Trial Court, to the time that he subsequently sought to justify the admission of the oral statement into evidence in the Supreme Court of Louisiana. This change of approach clearly indicates that the prosecution was grasping for a basis of making the evidence admissible, and if the defendant's rights were affected, it didn't matter to the prosecution.

In the decision of *Michelson v. United States*, 335 U.S. 469, 69 S. Ct. 213, 93 L. Ed. 168 (1948), the United States Supreme Court stated:

"Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. Not that the law invests the defendant with a presumption of good character, *Greer v. United States*, 245 U.S. 559, 38 S. Ct. 209, 62 L. Ed. 469, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The State may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice."

The basic criticism of the rule generally permitting the admissibility of evidence of a prior offense within the confession and/or declaration against interest is that the accused has not taken the stand nor has he opened the door to any testimony relative to his good

character. In other words, according to the theory presented by the Louisiana Supreme Court in the instant case, any statement made by the defendant during the course of the confession must be admitted into evidence. However, such an analysis literally ignores the basic purpose of refusing to admit evidence of prior offenses, i.e., the jury is then confronted with the issue as to whether the defendant is a person with a "bad general record who is being denied a fair opportunity to defend against a particular charge." The Louisiana Supreme Court would appear to be interested only in the contents of the confession and/or declaration against interest, regardless of what the accused may have said concerning the prior offense or anything else. We respectfully submit that this is where the Honorable Supreme Court of Louisiana erred. The confession and/or declaration against interest in the instant case could certainly have been introduced without reference to the prior separate offense committed by the accused and without reference to the prior alleged incomplete offense. The confession and/or declaration in the instant case did not refer to these admissions as being so inseparably connected with the confession of the crime charged. In other words, the relevant portions of the confession relating to the crime charged herein could have been readily separated from those parts of the confession relating to the other or earlier crime. This is not a case where separation would have been impracticable; such separation could have clearly occurred without affecting the issue as to the confession relating to the instant offense charged herein.

We feel compelled to call Your Honors' attention to the fact that the reference to the prior offense was made by the District Attorney for Plaquemines Parish, Louisiana, in his opening statement, in the testimony of the police officer, and in the closing statement. The District Attorney for Plaquemines Parish here sought to obtain the benefit of any inference, innuendo, or connotation which could be attributable to the defendant's statement relative to the prior offenses, regardless of the remoteness of the offense, regardless of the fact that the offense was completely unrelated to the homicide herein in any manner whatever, and regardless of the fact that the confession and/or declaration against interest herein used could have come into evidence without any reference to the prior offense.

The alleged confession and/or declaration against interest herein is very analogous to the confession sought to be used by the prosecution in the case of *United States v. Jacangelo*, 281 F.2d 574 (3rd Cir., 1960), wherein one of the defendants in the course of a confession referred to a prior conviction of his co-defendant, and the Third Circuit Court of Appeal held that any reference to the prior conviction of the co-defendant was inadmissible and constituted reversible error. The Court stated:

> "Second, the evidence of involvement in other crimes was intrinsically inadmissible as highly prejudicial information about a collateral matter not connected with the offense charged. *Brown v. United States*, 3 Cir., 1936, 83 F.2d 383; *Helton v. United States*, 5 Cir., 1955, 221 F.2d

338. This was a far more serious matter than the technical objection to the statement as hearsay. To inform the jury of prior crimes of a defendant is, in the view of the Supreme Court, so improper and so prejudicial that a mistrial must be declared, even when the jurors assert that they can and will disregard that information. *Marshall v. United States,* 1959, 360 U.S. 310, 79 S. Ct. 1171, 3 L. Ed. 2d 1250.

"Third, and in our view very significantly, it would have been a simple and effective procedure merely to delete from the confession before its submission to the jury the one sentence stating that Jacangelo was 'on probation' and 'on bail'. The continuity would not have been destroyed. The author's admission of his own wrongdoing and his narration of the essential facts of the alleged conspiracy would not have been distorted or changed in any significant way. There would simply have been a proper elimination of a prejudicial collateral disclosure about Jacangelo without any attendant interference with the intended and appropriate use of the confession."

The constitutional rights of an accused in a criminal action have been regularly preserved and protected by this Court. We need not go any farther than the landmark decisions involving *Mapp, Gideon, Escobedo, Miranda,* and *Griffin.* In all of these decisions and in the other recent decisions emanating from this Honorable Court in the field of constitutional law and crim-

inal procedure, the glaring and the paramount feature is the right of an accused to fair play in the course of his trial. The basic premise of fair play underlying the decisions of this court similarly exist in the instant case.

In the instant case, the District Attorney for the Parish of Plaquemines sought to justify the admissibility of the statements made by the defendant during the course of his oral confession and/or declaration against interest on the basis of the prior offense showing a pattern and propensity toward serious and violent injury or harm so as to show intent in the homicide herein, under L.S.A.-R.S. 15:445 and 15:446. In the Louisiana Supreme Court, the District Attorney for the Parish of Plaquemines sought to justify the admissibility of the challenged statements herein under L.S.A.-R.S. 15:450, relating to using the confession, admission or declaration in its entirety. Your Honors will note that the accused herein never did testify, and, therefore, he never did place his character at issue, as provided by L.S.A.-R.S. 15:495.

Your Honors have highlighted the basis of the constitutional objection herein in the case of *Spencer v. State of Texas*, 385 U.S. 554, 87 S. Ct. 648 (1967), wherein the dissenting opinion of Mr. Chief Justice Warren, concurred in by Mr. Justice Fortas, provides as follows:

> "* * * While this Court has never held that the use of prior convictions to show nothing more than a disposition to commit crime would

> violate the Due Process Clause of the Fourteenth Amendment, our decisions exercising supervisory power over criminal trials in federal courts, as well as decisions by courts of appeals and of state courts, suggest the evidence of prior crime introduced for no purpose other than to show criminal disposition would violate the Due Process Clause * * *".

A leading secondary authority high-lights the criticism of the prior offense testimony in the presence of the jury as follows:

> "* * * The deep tendency of human nature to punish, not because our victim is guilty this time, but because he is a bad man and may well be condemned now that he is caught, is a tendency which cannot fail to operate with any jury, in or out of court. * * *"

See 1 Wigmore on Evidence, §57, p. 456.

The rule relative to admissibility of reference to prior offenses has long been the subject of criticism. See Comment, 78 Harvard L. Rev. 426 (1964); Comment, 70 Yale L. J. 763 (1961); 10 Rutgers Law Review, 531, 532 (1956); 3 Wigmore, Evidence, §896-918 (3rd ed. 1940).

We could refer Your Honors to numerous other authorities criticizing the rule permitting reference to prior convictions of the accused under certain circumstances. Regardless of the criticisms contained within

these authorities, we respectfully submit that the issue is primarily one of fairness — which crime is the accused having to defend against — one of which he was convicted prior to the instant case, or the crime with which he is charged in the instant case. The accused who has not taken the witness stand in his own behalf and who has not put the subject of his character or reputation at issue finds himself in the unfortunate predicament of having to go forward, one way or another, for the purpose of overcoming any adverse inferences which may result from the testimony brought out by the prosecution. In other words, the accused is guaranteed the right under Fifth Amendment of the United States Constitution that he shall not be compelled to testify against himself; similarly, any reference thereto by the prosecution has been held to be unconstitutional. See *Griffin v. State of California,* 380 U.S. 609; 85 S. Ct. 1229 (1965). Nevertheless, the reference to the prior offense is one which is completely foreign to the issue before the Court in the instant prosecution and the accused must seek to explain in one way or another. The accused may have pleaded guilty in the prior offense solely because of many circumstances which do not appear of record. This is clearly what happened in the instant case, as the accused had been charged with three offenses, and pleaded guilty to one, i.e., the crime against nature. Yet, because of the plea of guilty in the prior offense, the accused who has not taken the stand, who has not sought to place his character at issue is confronted with the duty to explain away the impression which the jury may have obtained that he is generally a bad man as distinguished from being an individual who has

been guilty of the crime with which he is charged in the instant case.

This Honorable Court has been constantly concerned with the issue of fairness in any trial of an accused. In *Marshall v. United States*, 360 U.S. 310, 79 S. Ct. 1171, 3 L. Ed. 2d 1250 (1959), this Honorable Court granted a defendant a new trial where a newspaper account of the trial was read by several jurors, and in the article read by the jurors there was reference to prior convictions of the defendant. This Honorable Court ordered a new trial although the jurors reading the article stated that they would not be influenced thereby, and the Trial Judge stated that he felt there was no prejudice to the defendant. The issue presented herein is identical with the issue presented in *Marshall;* it is identical with the question raised in the dissenting opinion in *Spencer;* and it presents directly to the Court for adjudication the effect of "evidence of prior crimes introduced for no purpose other than to show criminal disposition * * * ". We respectfully submit that such evidence is clearly violative of the Due Process Clause.

As can readily be seen, the issue presented by Cardinale herein is a natural sequel to the decision of this Honorable Court in *Spencer*. How far does *Spencer* go? Does *Spencer* furnish any reason to believe that the basic concept of fair play in due process has been modified? Should *Spencer* be limited in its application to the recidicity statute, or will it go beyond those statutes to "hold that evidence of prior crimes introduced for no other purpose other than to show criminal disposition would violate the Due Process Clause?"

We respectfully submit that the issues presented herein should be resolved favorably to the petitioner herein. In the field of administration of criminal justice, the likelihood of a defendant being prejudiced because of an unfair admission into evidence concerning a prior offense is too great to be ignored. *Michelson, Spencer,* and *Marshall* all indicate that the procedure followed herein by the District Attorney for the Parish of Plaquemines was clearly unconstitutional. We, therefore, respectfully submit that the decree of the Louisiana Supreme Court should be reversed and that a new trial should be granted to the petitioner.

CONCLUSION

In conclusion, we respectfully submit that the judgment of the Honorable Supreme Court of Louisiana should be reversed, and that a new trial should be ordered herein.

Respectfully submitted,

NATHAN GREENBERG
848 Second Street
Gretna, Louisiana
ATTORNEY FOR
PETITIONER

CERTIFICATE

I hereby certify that a copy of the above and foregoing petition on behalf of plaintiff has been mailed to Hon. Jack P. F. Gremillion, Attorney General, State Capitol, Baton Rouge, Louisiana, Hon. Leander H. Perez, Jr., District Attorney, Parish of Plaquemines, Pointe a la Hache, Louisiana, and Hon. Preston Hufft, Assistant District Attorney, Chalmette, Louisiana, by postage prepaid.